



Strippers Come Out On Top In Misclassification Action

Law360, New York (August 14, 2009) -- A Massachusetts judge has given a leg up to a class of exotic dancers, ruling that their employer improperly classified them as independent contractors.

Judge Frances McIntyre of the Massachusetts Superior Court on Aug. 7 granted class certification to exotic dancer Lucienne Chaves and as many of 70 of her fellow performers while simultaneously issuing summary judgment in their favor, determining that their employer illegally classified them as independent contractors.

“We were very pleased with the court’s decision,” said attorney Shannon Liss-Riordan, who represents the plaintiffs. “This was a group of workers subject to much abuse due to their misclassification.”

According to Liss-Riordan, the dancers did not receive an hourly wage for the time they spent working at King Arthur’s Lounge Inc. — a Chelsea, Mass., adult entertainment venue — and were required to pay the owners \$35 out of the tips they amassed each shift for the “privilege” of working at the club.

The dancers were not paid the \$2.63 minimum wage for tipped workers and garnered income only from the tips they received while performing, she said.

Under Massachusetts law, workers must perform a service that is within the normal course of business to be considered an employee. They may be classified as an independent contractor if the individual is free from control and direction in performing the service, performs work outside the normal scope of the business or is engaged in an independently established trade.

King Arthur’s argued that Chaves constituted an independent contractor because she chose her own costumes, partners and routines and paid the \$35 fee to perform at the club each night.

But in response, Chaves noted that she was trained to perform by the club because she did not have any prior experience and was not allowed to control which shifts she worked or how much she could collect in performance fees.

In addition, when the dancers performed private dances for customers, the dancers had no control over what fee was charged for the performance or which patrons they would dance for, the complaint said.

The club also skimmed roughly a third off the fee dancers received for private dances, Liss-Riordan added.

The defendant claimed that its primary business was as a bar and to serve drinks, arguing that the exotic dancers were just a form of entertainment provided to customers.

But the judge ruled that the bar was clearly designed as an adult entertainment venue, because the stage was in the center of the bar and in direct view of most patrons.

Furthermore, Judge McIntyre added, the bar appeared to make roughly 70 percent of its revenue from strip club operations.

The club also argued that the live nude entertainment was akin to a sports bar broadcasting live games, asserting that such an activity did not mean that a sports bar's primary course of business was airing sports matches.

But “televisions and pool tables do not bring revenue directly to a sports bar; they are a sidelight to the business of selling alcohol,” the judge said. “A court would need to be blind to human instinct to decide that live nude entertainment was the equivalent to the wallpaper of routinely televised matches, games and sports talk in such a place.”

The plaintiffs are represented by Lichten & Liss-Riordan PC.

Counsel information for the defendants was not immediately available.

The case is Lucienne Chaves et al. v. King Arthur’s Lounge Inc., case number 07-2505, in the Superior Court of Massachusetts.